

Ryan Pains

31276

88-07

..... ~~SECRET~~

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

In The Matter Of:

RYAN PAINT MANUFACTURING COMPANY  
OAKLAND, CALIFORNIA

ORDER

88-07

STAN DAVIS,  
ROD MCDONALD  
RICHARD CHARLES

Respondents

PROCEEDING UNDER SECTION 106(a)  
OF THE COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION AND LIABILITY  
ACT OF 1980 (42 U.S.C. 9606(a))

I. JURISDICTION

This Order is issued on this date to RICHARD CHARLES, STAN DAVIS, and ROD MCDONALD, ("Respondents") pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9606(a) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499, by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA").

The Director, Toxics and Waste Management Division, EPA Region 9 has determined that there may be an imminent and

1 substantial endangerment to the public health or welfare or the  
2 environment because of a release or threatened release of hazardous  
3 substances from Ryan Paint Manufacturing Company, an abandoned  
4 paint waste disposal area operated by RICHARD CHARLES and  
5 currently owned by STAN DAVIS. The property was owned by ROD  
6 MCDONALD during the time of disposal.

7 This Order directs the Respondents to undertake actions to  
8 protect the public and the environment from this endangerment.

9 II. FINDINGS OF FACT

10 1. Ryan Paint Manufacturing Company is an abandoned paint  
11 waste storage area was located at 630 East 10th Street in Oakland,  
12 California.

13 2. The abandoned paint waste storage area is divided into two  
14 sections. The front of the waste area is directly accessible  
15 to any pedestrian and is scattered with drums containing hazardous  
16 waste, some of which have open bungs and lids which can be opened  
17 easily. There are approximately 100 paint drums in this front  
18 area. The back area contains approximately 165 drums which are  
19 stacked on pallets three drums high and labeled hazardous waste.  
20 The pallets are resting on a dirt surface.

21 3. The drums contain waste paints and waste solvents which  
22 have a highly ignitable and explosive hazard warning. Some of  
23 the containers are empty. The containers are explosive when  
24 empty. The waste paints and solvents are RCRA F005 listed hazardous  
25 waste due to the toluene contained in the paint and solvent and  
26 RCRA F001 characteristic ignitable hazardous waste as defined  
27 by 40 C.F.R. 261.33 and are therefore hazardous substances as  
28 defined by 40 C.F.R. 302.4.

1       4. Respondent Richard Charles is the former operator of Ryan  
2 Paint Manufacturing Company.

3       5. Respondent Stan Davis currently owns the property located  
4 at 640 East 10th Street, Oakland, California and the adjacent lot  
5 containing the hazardous substances.

6       6. Respondent Rod McDonald owned the property in October,  
7 November, and December of 1986 which was during the time of  
8 abandonment of the drums.

9       7. Alameda County Health Care Services Agency inspected  
10 Ryan Paint Manufacturing Company once on June 16, 1986 and again on  
11 September 16, 1986. Ryan Paint Manufacturing Company was sent  
12 two notices of violation by the Alameda County District Attorney  
13 for violations uncovered in these inspections. In January, 1988,  
14 the Alameda County District Attorney referred the case to EPA  
15 after Ryan Paint did not comply with the notices of violation.

16       8. On January 20, 1988 EPA conducted a Preliminary Assessment  
17 to determine the level of hazard. EPA found a direct hazard to the  
18 public due to the open access to highly flammable substances form-  
19 ing an attractive nuisance for children and a fire and explosion  
20 hazard in the neighborhood.

21       9. The facility is located in a residential and light  
22 industrial area with residences within 20 feet of the drums.

23                   III. CONCLUSIONS OF LAW

24       1. Richard Charles, Stan Davis, and Rod McDonald are "persons"  
25 as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

26       2. Ryan Paints located at 630 East 10th Street, Oakland,  
27 California is a "facility" as defined in Section 101(9) of CERCLA,  
28 42 U.S.C. §9601(9).

1           3. Richard Charles, Stan Davis, and Rod McDonald are  
2 "responsible" parties as provided in Section 107(a)(3) of CERCLA,  
3 42 U.S.C. §9607(a)(3).

4           4. Waste paint and waste solvents including toluene are  
5 "hazardous substances" as defined in Section 101(14) of CERCLA,  
6 42 U.S.C. §9601(14).

7           5. The abandonment of drums containing hazardous substances  
8 constitutes a "release" or a threatened "release" of hazardous  
9 substances into the environment as defined in Section 101(22) of  
10 CERCLA, 42 U.S.C. §9601(22).

#### 11                           IV. DETERMINATIONS

12           Based upon the Findings of Fact and Conclusions of Law, the  
13 Director, Toxics and Waste Management Division, EPA Region 9 has  
14 made the following determinations:

15           1. The release of hazardous substances and pollutants or  
16 contaminants from the facilities may present an imminent and  
17 substantial endangerment to public health, welfare or the  
18 environment.

19           2. In order to prevent or mitigate immediate and signifi-  
20 cant risk of harm to human health and the environment, an immediate  
21 removal action must be undertaken to contain and prevent the further  
22 releases and threatened release of hazardous substances, pollutants  
23 or contaminants at the facility.

24           3. The response measures ordered herein are consistent  
25 with the National Contingency Plan, 40 C.F.R. Part 300.

#### 26                           V. ORDER

27           Based upon the Findings of Fact, Conclusions of Law and  
28 Determinations, Respondents are hereby ordered to implement the

1 following measures under the direction of EPA's On-Scene  
2 Coordinator pursuant to Section IX of this Order...

3 1. Within two (2) calendar days of the effective date of  
4 this Order, Respondents shall install a fence with a gate around  
5 the perimeter of the property to completely restrict access to  
6 the waste storage area and shall post the property with signs  
7 reading "Danger: Hazardous Materials - Unauthorized Persons Keep  
8 Out." The fencing shall be a cyclone-type fence at least eight  
9 feet high with barbed wire at the top. A gate shall be installed  
10 and locked. A key to the lock shall be immediately provided to  
11 EPA.

12 2. Within two (2) calendar days of the effective date of  
13 this Order, Respondents shall submit to EPA a written removal plan  
14 which includes a schedule for the recycling or removal and proper  
15 disposal of all hazardous substances and containers from the  
16 facility. The removal plan shall include health and safety  
17 provisions to protect workers and local residents and the name  
18 and address of a Project Coordinator for Respondents whose  
19 responsibilities will be to receive all communications from EPA  
20 to the Respondents.

21 3. Within five (5) calendar days of EPA approval of the  
22 removal plan Respondents shall begin implementation of the plan.  
23 Respondents shall fully implement the removal plan as approved by  
24 EPA within the time period set forth in the schedule and under  
25 the direction of the On-Scene Coordinator.

26 4. Within fourteen (14) calendar days of completion of the  
27 clean up, Respondents shall submit to EPA a report fully describing  
28 the actions taken to recycle or remove and dispose of the waste

1 paint and waste solvent drums.

2 VI. COMPLIANCE WITH APPLICABLE LAW

3 In carrying out the terms of this Order, Respondents shall  
4 comply with all federal, state and local laws and regulations.  
5 All hazardous substances removed from the facility must be  
6 handled in accordance with Subtitle C and Subtitle D of the  
7 Resource Conservation and Recovery Act, 42 U.S.C. §6921 et seq.,  
8 and the regulations promulgated thereunder and in accordance with  
9 29 CFR 1910.120, the Occupational Safety and Health Act regulations  
10 for hazardous waste workers.

11 VIII. ON-SCENE COORDINATOR

12 EPA has appointed an On-Scene Coordinator (OSC) for the  
13 site who has the authority vested in the "On-Scene Coordinator"  
14 by 40 C.F.R. Part 300, et seq., published at 50 Fed. Reg. 47969  
15 (November 20, 1985). That authority includes, without limitation,  
16 the right to be on-site at all reasonable times, observe, take  
17 photographs and make other reports on the progress of the work as  
18 the OSC deems appropriate, and review records, files and documents  
19 relevant to the Order.

20 VIII. SUBMITTALS

21 All submittals and notifications to EPA pursuant to this  
22 Order shall be made to:

23 Director, Toxics and Waste Management Division  
24 United States Environmental Protection Agency  
25 215 Fremont Street  
San Francisco, California 94105

26 Copies of all submittals and notifications pursuant to this  
27 Order shall be sent to:

28 On-Scene Coordinator

1 Rich Martyn T-4-9  
2 Toxics and Waste Management Division  
3 Environmental Protection Agency, Region 9  
4 215 Fromont Street  
5 San Francisco, California 94105

6 All approvals and decisions of EPA made regarding such  
7 submittals and notifications shall be communicated to Respondents  
8 by the Director, Toxics and Waste Management Division, U.S.  
9 Environmental Protection Agency, Region 9, or his designee.  
10 No informal advice, guidance, suggestions or comments by EPA  
11 regarding reports, plans, specifications, schedules or any  
12 other writing will relieve Respondents of  
13 their obligation to obtain the formal approval as may be  
14 required by this Order.

15 IX. ACCESS

16 Respondents shall provide ready access to EPA employees and  
17 authorized representatives to the facility. Nothing in  
18 this Order limits the rights of entry or inspection that EPA or  
19 other agencies may otherwise have by operation of law.

20 X. ENDANGERMENT DURING IMPLEMENTATION

21 The Director, Toxics and Waste Management Division, EPA,  
22 Region 9 may determine that act (whether pursued in implementation  
23 of or in noncompliance with this Order) or circumstances may  
24 endanger human health, welfare or the environment and may order  
25 the Respondents to stop further implementation of this Order  
26 until the endangerment is abated.

27 XI. GOVERNMENT NOT LIABLE

28 The United States Government and its representatives shall  
not be liable for any injuries or damages to persons or property  
resulting from the acts or omissions of the Respondents, their



1 employees, agents or contractors in carrying out activities  
2 pursuant to this Order, nor is the Federal Government a party to  
3 any contract entered into by the Respondents, or their agents in  
4 carrying out activities pursuant to this Order.

#### 5 XII. PENALTIES FOR NONCOMPLIANCE

6 A willful violation or failure or refusal to comply with  
7 this Order, or any portion thereof, may subject Respondents  
8 to a civil penalty of not more than \$25,000 per day in which  
9 a violation occurs or failure to comply continues, pursuant to  
10 the provisions of Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1).  
11 Failure to comply with this Order without sufficient cause may  
12 pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3)  
13 subject Respondents to punitive damages of up to three times the  
14 total costs incurred by the United States caused by Respondents'  
15 failure to take proper action.

16 EPA may take over the removal action at any time if EPA  
17 determines that Respondents are not taking appropriate action  
18 to mitigate the site hazard. EPA may order additional actions  
19 which it deems necessary to protect the public health, welfare  
20 or the environment. In the event EPA assumes responsibility for  
21 the removal action, Respondents shall be liable for all costs  
22 incurred by EPA to mitigate the site hazard.

#### 23 XIII. OPPORTUNITY TO CONFER

24 Respondents may request a conference with the Director,  
25 Toxics and Waste Management Division, EPA Region 9, or his staff  
26 to discuss the provisions of this Order. At any conference held  
27 pursuant to Respondents request, Respondents may appear in person  
28 or by counsel or other representatives for the purpose of presenting

1 any objections, defenses or contentions which Respondents may  
2 have regarding this Order. If Respondents desire such a conference,  
3 Respondents must make such request orally within 24 hours of  
4 receipt of this Order, to be immediately confirmed in a written  
5 request. Please make any such request to any of the contact  
6 persons listed below.

7 XIV. PARTIES BOUND

8 This Order shall apply to and be binding upon the Respon-  
9 dents, their officers, directors, agents, employees, contractors,  
10 successors and assigns.

11 XV. NOTICE OF INTENT TO COMPLY

12 Immediately upon receipt of this Order, Respondents shall  
13 orally inform EPA of their intent to comply with the terms of this  
14 Order. This shall be confirmed in writing within two (2) days  
15 of receipt of this Order. Failure to notify EPA of the Respondents'  
16 intent to comply will be construed by EPA as a refusal to comply.

17 XVI. NOTICE TO STATE

18 Notice of the issuance of this Order has heretofore been  
19 given to the State of California. EPA will consult with California  
20 Department of Health Services, as appropriate, to ensure that the  
21 plans submitted pursuant to this Order are consistent with state  
22 and local requirements.

23 XVII. EFFECTIVE DATE

24 Notwithstanding any conferences requested pursuant to the  
25 provisions of this Order, this Order is effective within 72 hours  
26 of the date of this Order, and all times for performance shall be  
27 calculated from that date.

28 ///

1 It is so ordered on this \_\_\_\_ day of January, 1988.

2 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

3  
4 By: *Jeff Zelikson* 1/25/88

5 *J/Z* JEFF ZELIKSON  
6 DIRECTOR, TOXICS & WASTE MANAGEMENT DIVISION  
7 EPA, REGION 9

8 Contacts

9 Rich Martyn  
10 Field Operations Branch T-4-9  
11 US Environmental Protection Agency  
12 215 Fremont Street  
13 San Francisco, CA 94105  
14 (415) 974-7729

15 Julia Bussey  
16 Superfund Programs Branch T-4-4  
17 US Environmental Protection Agency  
18 215 Fremont Street  
19 San Francisco, CA 94105  
20 (415) 974-8228

21 Jon Wactor  
22 Assistant Regional Counsel  
23 Office of Regional Counsel  
24 US Environmental Protection Agency  
25 215 Fremont Street  
26 San Francisco, CA 94105  
27 (415) 974-8042  
28